



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Submitted: January 12, 2006
Decided: January 17, 2006

James F. Waehler, Esquire
Tunnell & Raysor, P.A.
30 East Pine Street
P.O. Box 151
Georgetown, DE 19947

Mr. Benjamin Wiltbank, II
203 Apollo Lane
Milton, DE 19968

Re: *I/M of the Purported Last Will and Testament of Arlington J.
Wiltbank, Sr.*, Civil Action No. 2251-S

Dear Counsel:

This matter is before the Court on Petitioners' Application for Costs, filed November 23, 2005, and an Application for Costs filed by Benjamin Wiltbank, II on December 29, 2005, and revised on January 12, 2006.

Based on its Memorandum Opinion of October 18, 2005, this Court entered a final order in favor of Petitioners in the subject action on November 15, 2005. Having prevailed in that action, Petitioners are entitled, pursuant to Court of Chancery Rule 54(d), to recover the costs they incurred in prosecuting the litigation. The Court has reviewed the cost items for which Petitioners seek reimbursement and finds that they are consistent with the type of court costs generally recoverable under Rule 54(d). Respondent Benjamin Wiltbank has not presented any argument as to why those costs should not be awarded. Accordingly, the Court hereby orders that Respondent must pay

to Petitioners the sum of \$1,777.84 as reimbursement for the costs they incurred in this action.

Although Benjamin Wiltbank filed his own “Application for Costs”, he has not cited any legal basis upon which he would be entitled to recover his costs in this action. Because Mr. Wiltbank was not the prevailing party, he is not entitled to recover any costs under Rule 54(d). Furthermore, most if not all of the cost items identified in Mr. Wiltbank’s application are not reimbursable court costs in any event. Accordingly, I hereby deny Mr. Wiltbank’s Application for Costs.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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